

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

LISA A. KENNICOTT, LISA A.  
GARCIA, SUE C. PHELPS, and JUDI  
DOOLITTLE, on behalf of themselves and  
a class of those similarly situated,

Plaintiffs,

v.

SANDIA CORPORATION d/b/a SANDIA  
NATIONAL LABORATORIES,

Defendant.

Case No. 1:17-cv-00188 JB/GJF

**PLAINTIFFS' SUPPLEMENTAL BRIEF REGARDING THE EFFECT OF THE FIRST  
AMENDED COMPLAINT ON SANDIA'S OBJECTIONS TO ORDER GRANTING  
PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

## **I. INTRODUCTION**

Magistrate Judge Fouratt correctly concluded that Plaintiffs are entitled to discovery of internal complaints of gender discrimination and associated investigation files because both the content of those complaints and how Sandia responds to them may “inform or support Plaintiffs’ claim that there is a culture of gender discrimination at Sandia.” Order, ECF No. 112 at 6-7. The proportionality requirement of Federal Rule of Civil Procedure 26(b)(1) is met because this evidence is key to proving intent under a Title VII pattern-or-practice theory of disparate treatment liability, whereby Plaintiffs must “establish by a preponderance of the evidence that [gender] discrimination was [Sandia]’s standard operating procedure.” *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1975). Moreover, Sandia has conceded that production is not burdensome because there are just 45 internal complaints. *See* Clerk’s Minutes (6/8/18) at 3, ECF No. 131.

After the briefing on Sandia’s Objections to Magistrate Judge Fouratt’s order, Plaintiffs filed a First Amended Complaint (“FAC”). ECF No. 146. The amended allegations in the FAC *bolster* Magistrate Judge Fouratt’s determination that Plaintiffs are entitled to this discovery.

## **II. ARGUMENT**

Magistrate Judge Fouratt concluded that Plaintiffs’ discovery request is a means to “flesh out allegations for which” Plaintiffs “have at least a *modicum of factual support*.” Order at 3 (emphasis added) (quoting *Landy v. Swire Oilfield Servs., LLC*, 323 F.R.D. 360, 375-76 (D.N.M. 2018) (Browning, J.)). The FAC now alleges that, in addition to maintaining “company-wide policies and practices [that] systematically violate female employees’ rights and operate in a corporate culture infected with gender bias,” Sandia has a discriminatory corporate culture

. . . reflected in the formal complaints of gender discrimination brought by class members—including sexual harassment, pregnancy discrimination, hostile work environment, retaliation, and unequal treatment in pay and promotions—during the class period. . . . Sandia’s handling of and response to these complaints has been inadequate to remedy or deter discrimination, or to prevent retaliation against those who complain. Together, the complaints and Sandia’s response to the complaints demonstrate that Sandia operates under a policy and practice of

discrimination against women.

FAC at ¶ 3; *cf.* Complaint at ¶ 3 (ECF No. 1). The FAC also reinforces the need for discovery of all gender discrimination complaints to address Plaintiffs' allegation that Sandia has failed to take appropriate action to protect women from discrimination:

Sandia has intentionally discriminated against Plaintiffs and the Class . . . by . . . [f]ailing to reasonably investigate and respond to employee complaints of gender discrimination, including sexual harassment, hostile work environment, pregnancy discrimination, and retaliation for raising complaints of same.

FAC at ¶ 87(c); *see also Brown v. Nucor*, 785 F.3d 895, 917 (4th Cir. 2015) (policy of “managerial inaction” in addressing employee complaints supported certification of disparate treatment case). Sandia has conceded that “if those paragraphs [of the FAC] had been in Plaintiffs' original complaint,” Sandia's “discovery position would be weaker.” Clerk's Minutes (7/10/18) at 2, ECF No. 148.

Magistrate Judge Fouratt also correctly determined that Plaintiffs' request is *not* a “fishing expedition.” Order at 3 (quoting *Landy*, 323 F.R.D. at 360). Despite Plaintiffs' express representation that they “do not intend to use the [complaint] evidence to ‘develop new claims,’” Pls.' Resp. to Def.'s Objs., ECF No. 127, at 8, Sandia has continued to raise this straw man, *see* Def.'s Reply, ECF No. 139, at 2 (“[I]n reality, there can be no other purpose for the discovery . . . .”). Plaintiffs' amendment should put Sandia's claim to rest, as the FAC confirms: “These individual complaints of gender discrimination are not referenced here for the purpose of pleading individual claims of harassment, pregnancy discrimination, or hostile work environment; rather, these complaints evidence a culture of bias at Sandia.” FAC at ¶ 3. Notably, Plaintiffs' FAC narrows, rather than broadens, Plaintiffs' class claims.

### **III. CONCLUSION**

For the reasons set forth above and in ECF Nos. 92, 107, 127, Plaintiffs respectfully request that the Court overrule Sandia's objections to Magistrate Judge Fouratt's Order Granting Plaintiffs' Motion to Compel, ECF No. 112.

Respectfully submitted,

Dated: July 20, 2018

By: /s/ Kelly M. Dermody

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of July, 2018, I filed the foregoing pleading electronically through the CM/ECF system, which caused all counsel to be served by electronic means:

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